Office Supreme Court, U. S.
FILED
SEP 23 1971
E. ROBERT SEAVER, CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1971

No. [redacted] 77

DHARANDAS TULSIDAS, *et al*, *Petitioners*

vs.

V. ALDANESE, *Insular Collector of Customs*, *Respondent*

BRIEF OF RESPONDENT OPPOSING APPLICATION FOR WRIT OF CETIORARI

GRANT T. TRENT,
Lieutenant-Colonel, Judge Advocate.
LOGAN N. ROCK,
Captain, Judge Advocate,
Attorneys for Respondent.

BYRON BROS., INC., PRINTERS, WASHINGTON

SUBJECT-INDEX

PAGE

Statement of the Case 1
Petitioner's Statement of Facts and Assignments of Error 2, 3
Counsel's Statement of the Law 3
Evidence and "Articles of Agreement" 5, 6
Industrial Partners are not Merchants 11
The terms "merchant" and "merchants" defined 13, 14, 15
Immigration Laws 15, 16, 17, 18
Chinese Exclusion Laws 18, 19, 20
Immigration Laws and Chinese Exclusion Laws considered together 20, 21, 22
Power of this Court to review Judgments and Decrees of the Insular Supreme Court 23, 24
No statute of the United States "involved" 24, 25
This Court will not grant a Writ of Certiorari for the purpose of reviewing a correct judgment, simply because some of the reasons given by the court below are erroneous 26, 27
Conclusion 28

AUTHORITIES CITED

Adjudicated Cases

PAGE

Chin Yow v. United States 9
Chin Sing Quon v. United States 9
Tan Puy v. The Insular Collector of Customs 10
La Compania Maritima v. Munoz 12
Criado v. Gutierez Hermanos 12
Chinese Exclusion Case 19
United States v. Wong You 21
Chae Chan Ping v. United States 21
Law Ow Bew, Petitioner 24
Ex parte Wu Kao 26

STATUTES OF THE UNITED STATES

PAGE

Act of February 5, 1917 ..... 3, 14, 17, 20
Act of November 3, 1893 ..... 14, 23
Act of March 3, 1873 16
Act of February 26, 1885 16
Act of March 3, 1891 ..... 16, 21
Act of March 3, 1903 16
Act of February 20, 1907 16
Act of March 26, 1910 18
Act of August 2, 1882 18
Act of May 6, 1882 19
Act of July 5, 1884 19
Act of October 1, 1888 19
Act of April 29, 1902 19
Act of April 27, 1904 20
Act of August 29, 1916 23
Act of September 6, 1916 24

TREATIES OF THE UNITED STATES

PAGE

Burlingame Treaty 18, 19
Supplementary Treaty 19

PHILIPPINE STATUTES

PAGE

Code of Commerce 11, 12, 13
Administrative Code, 1917 ..... 13, 14

In the Supreme Court of the United States.

OCTOBER TERM, 1921

No. 899

DHARANDAS TULSIDAS, *et al, Petitioners*

vs.

V. ALDANESE, *Insular Collector of Customs, Respondent*

BRIEF OF RESPONDENT OPPOSING APPLICATION FOR WRIT OF CETIORARI

STATEMENT OF THE CASE

The petitioners arrived in Manila, Philippine Islands, on September 26, 1919, on board of the Steamship "TANGO MARU" and sought to enter that country as merchants. A board of special inquiry found that they were not merchants within the meaning of the Immigration Law. The decision of the board was confirmed by the Insular Collector of Customs. Thereupon, habeas corpus proceedings were instituted in the Court of First Instance and after due consideration the decision of the customs authorities was reversed and petitioners were ordered set at liberty. On appeal, the Supreme Court of the Islands reversed the judgment of the Court of First Instance and ordered that the petitioners be remanded to the custody of the Collector of Customs for deportation.

PETITIONERS' STATEMENT OF FACTS AND ASSIGNMENTS OF ERROR

Under the heading "Grounds relied upon for the issuance of the writ," counsel states in his petition:

> "That the evidence submitted by your petitioners stands unchallenged and uncontroverted; that there was no dispute in the court below as to the facts upon which your petitioners base their contention that they are merchants within the meaning of Section 3 of the Act; that the undisputed testimony of the witnesses, read together with the articles of partnership, discloses that your petitioners are industrial partners of the firm of Wassiamall Assomall and Company, silk merchants, with their principal place of business and domicile in Manila; that the petitioners receive no salary or wages, but share in the profits; that Sukhrani and Lekhraj are former residents of the Philippine Islands, and were, while in the Islands, industrial partners of the predecessors in the business of the above-mentioned co-partnership, the former having been absent in India for about 16 months following a residence in the Islands of about three years, and the latter having been absent in India for about three years following a residence in the Islands of about 19 years; that the occupation of your petitioners set out in their passports is that of salesmen; that as industrial partners of the above-mentioned firm they will perform the duties of salesmen and of sub-managers; and that the articles of co-partnership submitted as evidence were executed in pursuance of a reorganization of the firm after the death of some of the pormer partners."

Counsel insists that the Insular Supreme Court erred—

(1) In basing its judgment on a ruling that the sole evidence permissible in support of the petition-

ers' claim that they are merchants is the presentation of "Section Six Certificates;" and

(2) In ruling that the petitioners must be excluded also because they failed to show that they were merchants in the country from which they came; and that

(3) The ruling of the Board of Special Inquiry and of the respondent Collector of Customs, that an industrial partner in a Philippine mercantile co-partnership, who gives his services to the business as salesman or manager, is not a merchant as that term is used in the Immigration Act, was based upon such a manifestly erroneous construction and misconception of the Act of Congress and the laws of the Philippine Islands touching commercial partnerships, that the Courts of the Philippine Islands and this Honorable Court may and should review and reverse in habeas corpus proceedings, the order of the respondent detaining, and directing the deportation of your petitioners."

Counsel states the law touching the jurisdiction of the courts to be as follows:

"While it is admitted that, under the express provisions of the statute, the decision of a Board of Special Inquiry, such as that now under consideration, is final, when affirmed on administrative appeal (Act February 5, 1917, Chapter 29, Section 17), nevertheless, this Honorable Court and the Courts of the Philippine Islands may review the decision of such administrative officers, in habeas corpus proceedings, when it is alleged and shown that they have abused the power and discretion conferred upon them, or that they *rested their conclusions on a manifestly erroneous construction or misconception of the law applicable to the facts disclosed by the record.*"

In the memorandum brief filed by counsel in support of the petition the questions are presented in the following order: (a) Section Six Certificates; (b) "natives" of the bared zone are not required to prove in *every* instance that they are merchants in their domicile of origin—Subdivision 3 of Rule 8 of the Immigration Rules is not applicable to the Philippine Islands; and (c) evidence as to the status of petitioners as industrial partners of the firm of Wassiamall Assomall and Company of Manila.

We propose to present our views in this order: (1) The evidence was not sufficient to convince the Insular Customs Officers that the petitioners were industrial partners in the above mentioned firm; (2) industrial partners are not merchants within the meaning of Section 3 of the Immigration Act of February 5, 1917; and (3) the power of this court to review judgments and decrees of the Insular Supreme Court—this court will not order up a correct judgment for review.

ARGUMENT

At the outset, it may be stated that the issues are clarified by the petitioners themselves, in that they admit that their sole and only right to enter the Philippine Islands rests upon their claim that they are industrial partners of the firm of Wassiamall Assomall and Company, silk merchants domiciled in Manila, Philippine Islands. They do not claim that they are merchants in their domicile of origin, nor that the firm of Wassiamall Assomall and Company has or had any branch establishments anywhere outside of the Islands in which they are now or ever have been in any wise interested. Nor do they claim that they were not given a fair and full hearing before the Insular Customs Officers.

We will inquire first whether the petitioners were, at the time they sought to enter the Philippine Islands, industrial partners of the firm of Wassiamall Assomall and Company. The evidence before the Customs Officers consists of the testimony of the petitioners, their passports and the "Articles of Partnership" executed in Hong Kong on September 19, 1919.

Dharandas Tulsidas, nineteen years of age, who was entering the Philippine Islands for the first time, testified that "I am coming as a partner of Wasumul and Asumul Store. I will get a part of the profits. I was a partner of this firm already in India in 1915. I have been connected with the firm in Manila since January 1, 1919." He presented the partnership agreement to corroborate his last statement.

Naraindas Lekraj, forty-five years of age, testified that he left the Philippine Islands in December, 1915, for India, having lived in the Islands for 19 years; that he is now and has been since 1909 an industrial partner of the firm of Wassiamall Assomall and Company; that he was such partner during his absence; that he is now going to be one of the managers; that the store is now owned by five heirs; and that the one signing the "agreement" was authorized by the other heirs. He presented a passport issued at Manila on December 3, 1915, by the British Consul General.

Allumul Hakumul Sulchrain, twenty-seven years of age, stated that he had lived in the Philippine Islands for three years, leaving there for India about 16 months ago; that he became an industrial partner of the firm of Wassiamall Assomall and Company in Manila in 1916; that he will be a salesman and manager in that store; that he has the agreement, which was signed in Hong Kong on Septem-

ber 19, 1919, to show that he is a partner; that there are eleven persons in that agreement; and that there are five managers in Manila and three outside of the Islands in Hong Kong. His passport was issued at Karachi on March 20, 1919.

The first paragraph of the "Partnership Agreement" reads as follows:

> "This agreement made at Hong Kong, this nineteenth day of September, One thousand nine hundred and nineteen by and between TOPANDAS WASSIAMALL of Hyderabed Sind, Merchant—WATOOMAL WASSIAMALL, SHAMDAS HIRANAND, GANGARAM TILOKCHAND—and DHALOOMAL NONOOMAL the members of the existing firm of * * * 'Wassiamall Assomall & Co.' to be known as the capitalist partners, parties of the first part and WASSIAMALL ASSOMALL, NARAINDOS LEKHAJ, ALLUMAL HAKUMAL, KISHINCHAND DULTRAM, JHAMANDAS DEWANDAS and GAGANDAS ROCHIRAM and DHARMDAS TULSIDAS now residing at Hong Kong, to be known as industrial partners, parties of the second part."

It is therein declared that the "said parties have agreed, and by these presents do agree, to associate themselves as co-partners" for the purpose of buying and selling goods; that the principal place of business shall be Manila or such other place as the business may hereinafter be transferred; that this contract *shall relate to this particular* store and business only; that the existence of this co-partnership shall relate back to January 1, 1919, from which date the books have been kept; and that the industrial partners agree that other and further industrial partners may be admitted to the firm.

The only indication in the "partnership agreement" that the petitioners, or either of them, ever had any con-

nection with the firm of Wassiamall Assomall and Company prior to September 19, 1919, is the statement that "the existence of this co-partnership shall relate back to January 1, 1919, from which date the books thereof have been kept." Not one of the petitioners is named as a partner or as ever having been a partner prior to the execution of the document. In fact, the above quoted paragraph of the agreement, after naming the capitalist partners, says that they are "the members of the existing firm of Wassiamall Assomall and Company," and that the petitioners are "to be known as industrial partners." If the petitioners had been members of that firm during the time claimed by them they would have been mentioned as "members of the existing firm."

The testimony of the petitioners, read together with the articles of partnership, if accepted as true, disclose at most that it was the intention of all the parties that the petitioners would become industrial partners of that mercantile firm after they had entered the Philippine Islands. The young man, Tulsidas, said that "he was coming as a partner and *will get a part of the profits,*" and the "agreement" discloses that the parties have agreed and do agree "to associate themselves as co-partners." The petitioners could not enter upon the execution of their part of this contract until after their arrival in Manila, where the only business affected by the contract was located, and where they could render services as industrial partners.

There is another view of the case to be gathered from the reading of the cold record, and that is the one involved in the question as to whether or not the "partnership agreement" was entered into by the parties in good faith. Was it a scheme gotten up for the purpose of evading the prohibitory provisions of the Immigration

Act of February 5, 1917 (39 Stat., 874)? The document certainly bears many ear-marks to that effect. A comparatively small mercantile concern, with five capitalist partners, takes in six industrial partners at one time and provides the means for taking in an unlimited number of other industrial partners. The activities and interest of the six new industrial partners, three of whom are the petitioners, are limited to the Manila store. They have no interest in any other business of the firm if it has establishments elsewhere. No attempt whatever was made to explain the provisions in the "agreement" that the existence of this co-partnership shall relate back to the 1st day of January, 1919, "from which date the books thereof have been kept." Did the capitalist partners mean to share the profits with the six new industrial partners from that date, although they had rendered no service?

After all, the true theory of the case is that the members of the board of special inquiry and the Collector of Customs did not believe the testimony of the petitioners and that the parties were acting in good faith when they executed the "partnership agreement." The customs officers, being men with broad experience in this line of work, saw through the scheme at once and refused to permit the petitioners to land.

The contention of counsel for petitioners that the customs officers found as a fact that the petitioners were industrial partners of the firm of Wassiamull Assomall and Company, or at least determined the issues upon that theory, is not supported by the record. The board found that Tulsidas had no business of his own either in India or the Philippine Islands. And in respect to the other two petitioners, the board found that they did not have

a business of their own and that "in reality they are salesman" in the store of Wassiamull Assomall and Company. The Collector ruled that the petitioners "failed to show that they belong to any of the exempt classes under Section 3 of the Act of February 5, 1917." It is true that the board stated that "industrial partners are not merchants within the meaning of the Immigration Law," but it did not find that the petitioners or either of them were such industrial partners.

If we are correct in our view touching the action of the administrative authorities, there was no abuse of the power and discretion conferred upon them, nor did they base their "conclusions on a manifestly erroneous construction or misconception of the law applicable to the facts disclosed by the record."

In *Chin Yow* v. *United States,* 208 U. S. 8, the court said:

> "It must not be supposed that the mere allegation of the facts opens the merits of the case, whether those facts are proved or not, and, by way of caution we may add that jurisdiction would not be established simply by proving that the Commissioner and the Department of Commerce and Labor, did not accept certain sworn statements as true, even though no contrary or impeaching testimony was adduced. * * * But unless and until it is proved to the satisfaction of the Judge that a hearing properly so called was denied, the merits of the case are not open, and we may add, the denial of a hearing cannot be established by proving that the decision was wrong."

In *Chin Sing Quon* v. *United States,* 231 Fed. Rep. 948, the Circuit Court of Appeals held on March 14, 1916, that—

> "The question was one of fact and even if we might have reached a different conclusion if we had heard the testimony in the first instance, the assumption furnishes no reason for a reversal."

In *Tan Puy* v. *The Insular Collector of Customs*, 36 Phil. Reps. 900, the court said:

> "It has been repeatedly held that the immigration officials are not required to accept, as true, statements made to them by applicants for admission into the territory of the United States, nor the witnesses presented in their behalf, even though such testimony should be given under oath."

Where it is shown that the witnesses were disbelieved arbitrarily and capriciously and that the probative force of real documentary evidence was disregarded, it could readily be concluded that the parties had not been given a free, full and fair hearing because such a hearing does not only consist of an opportunity to present one's case but in reality it is something more. The object of a hearing is as much to have evidence considered as it is to present it. The right to adduce evidence, without the corresponding duty on the part of the customs officers to consider it, is vain. Such a right is futile if the persons to whom the evidence is presented can thrust it aside without notice or consideration. But the duty to duly and deliberately consider the evidence does not impose the obligation to decide right as others may conceive the right to be.

In the case at bar, no reason can be advanced nor errors pointed out which even indicate that both the Board and the Collector of Customs did not give due consideration to all the evidence presented. The fact that the Board and the Collector did not believe that the witnesses were

telling the truth and that the articles of partnership were made in good faith do not indicate a lack of due consideration, because no other reasonable conclusions could be reached. The record certainly would not justify a holding that these officers acted in the least arbitrarily or capriciously, especially when it is remembered that the Board had the right to take into consideration the personal appearance and characteristics of the petitioners in weighing the evidence, it being well known that there is a marked difference in this respect between the merchant and laboring classes of Indians. The result is that the administrative officers did not abuse the power and discretion conferred upon them in rendering the decisions complained of. The courts are therefore without authority to review those decisions.

INDUSTRIAL PARTNERS ARE NOT MERCHANTS

If it were true that the evidence of record is sufficient to establish the claim of the petitioners that they are industrial partners of the firm of Wassiamall Assomall and Company, and if it be conceded that such was the finding and understanding of the customs officers, as is urged by counsel for petitioners, the result would be the same for the reason that industrial partners are not merchants within the meaning of Section 3 of the Immigration Act of February 5, 1917.

Article 1 of the Code of Commerce in force in the Philippine Islands provides "That the following are merchants for the purposes of this code: (1) Those who, having legal capacity to trade, devote themselves thereto customarily;" and (2) "Commercial or industrial associations which are formed in accordance with this code."

Persons who by chance make some commercial transactions can not be considered merchants (Decisions of the Supreme Court of Spain of March 16, 1870, and December 12, 1889). A legally formed commercial co-partnership may consist of both capitalist and industrial partners (Art. 138 of the Code of Commerce). Industrial partners can not engage in other transactions except by the express consent of the partnership. The recording of the articles of partnership in the mercantile registry perfects the partnership organization and makes all the signers thereof partners. Both capitalist and industrial partners are liable to third persons for the debts and obligations contracted by the partnership (*La Compania Maritima* v. *Munoz, et al.*, 9 Phil. Reps. 326), unless otherwise provided in the articles of agreement (*Criado* v. *Gutierez Hermanos*, 37 Phil. Reps. 883). The articles of agreement executed in Hong Kong on September 19, 1919, purport to create an ordinary general mercantile partnership under the firm name of "Wassiamall Assomall and Company" and provided that the profits and losses shall be distributed as stated in paragraphs 8 and 9 thereof. The direction, control and management of the firm and the right to use the firm name were vested "solely and exclusively" in the capitalist partners.

By Article 4 of the Code of Commerce it is provided, as one of the conditions of legal capacity to engage in commerce or acquire the status of a merchant, that the person must have reached the age of 21 years. While Article 15 provides that foreigners may engage in commerce in the Philippine Islands, subject to the laws of their own country, the petitioner Tulsidas, who was only 19 years of age at the time he sought to enter the Islands, did not attempt to show what that law is in his home

country. Clearly, therefore, Tulsidas is not entitled to enter the Islands for the reason that he cannot acquire a mercantile status in that country.

Counsel admits that if the services which an industrial partner is obligated to render are not such as are usually performed by merchants, the mere fact that he is an industrial partner of a commercial enterprise will not constitute proof that he is a merchant within the meaning of the Immigration Act; but counsel insists that the services which the petitioners were obligated to perform, "carrying on the business of a silk merchant, buying and selling silks," are in fact services rendered by the ordinary merchant. Upon this point counsel apparently has overlooked the important provisions of the articles of agreement that the direction, control and management of the firm and the right to use the firm name were vested solely and exclusively in the capitalist partners. Article 128 of the Code of Commerce provides that the partners not duly authorized to make use of the firm's signature "shall not make the company liable through their acts and contracts, even though they execute them in the name of the latter and under its signature." The petitioners under the articles of agreement are not authorized to do any *buying* of silks. Their duty is confined to the selling of silks and such other ordinary labor as is required by establishments of this kind. Consequently if the petitioners had landed and had entered upon the execution of their contract, they would not be "engaged in *buying* and selling merchandise."

The term "merchant," as defined by the Philippine Legislature for the purposes of internal revenue, "means a person engaged in the sale, barter, or exchange of personal property of whatever character" (Sec. 1459, Administra-

tive Code, 1917). Under this definition a person to be a merchant must be "engaged" in the sale, barter, or exchange of personal property. To be "engaged," he must be occupied or employed in that work.

Coming now to the Immigration Act of February 5, 1917, it will be noted that natives of India are, with certain exceptions, absolutely excluded under the so-called latitudinal and longitudinal clause of Section 3 thereof. The exceptions are "Government officers, * * *, merchants, * * *, and their legal wives and children under 16 years of age." As the law contains these express exceptions, none other can be implied in its enforcement. The Department of Labor of the United States has defined the term "merchant" as it is used in Section 3 as follows:

> "A merchant is a person engaged, in good faith, in buying and selling merchandise, at a fixed place of business, which business is conducted in his name and under his supervision, and who during the time he claims to be engaged as a merchant does not engage in the performance of any manual labor except such as is necessary in the conduct of his buisness as such merchant."

Section 2 of the Act of November 3, 1893 (28 Stat. 7) being an act entitled "An Act to amend an Act entitled 'An Act to prohibit the coming of Chinese persons into the United States,' approved May 5, 1892," defines the term "merchant" as follows:

> "The term 'merchant,' as employed herein and in the acts of which this is amendatory, shall have the following meaning and none other: A merchant is a person engaged in buying and selling merchandise, at a fixed place of business, which business is con-

ducted in his name, and who during the time he claims to be engaged as a merchant, does not engage in the performance of any manual labor, except such as is necessary in the conduct of his business as such merchant."

The two definitions are essentially the same. That of the Department of Labor requires "good faith" and that the business must be conducted under the person's supervision—two elements not found in the Congressional definition. As the Immigration Act of February 5, 1917 neither defines the term "merchants" nor states the nature, character or kind of evidence required to establish an immigrant's status as a merchant, some aid may be derived from an examination of the history of the immigration legsilation and the Chinese exclusion laws touching the questions whether Congress intended to give to the term "merchants" as therein used, the same meaning as that set forth in Section 2 of the Act of November 3, 1893, and to guard against evasions of the prohibitory provisions of the Act of February 5, 1917, by requiring a high grade of proof in order to establish a status or occupation which would place the person or persons in one of the privileged classes, such as is required in cases of Chinese persons and persons of Chinese descent.

IMMIGRATION LAWS

Title 29 of the Revised Statutes of the United States contains the law in respect to immigration, as compiled and re-enacted effective December 1, 1873. While cooly trade and the building and operation of vessels for that purpose were prohibited, no prohibition existed against the voluntary immigration of even oriental subjects. Real restrictive provisions appear for the first time in the

Act of March 3, 1873 (18 Stat. 477) when the immigration of certain convicts, and of women for purposes of prostitution was forbidden. The Act of August 3, 1882 (22 Stat. 214) extended the prohibition to any "convict, lunatic, idiot, or any other person unable to take care of himself or herself without becoming a public charge." The Act of February 26, 1885 (23 Stat. 332, 333) marks the beginning of the legislation prohibiting the importation and migration of contract labor. That act applied to all aliens and foreigners except (a) private secretaries, servants and domestics for foreigners temporarily residing in the United States; (b) skilled workmen to perform labor upon any new industry not then established in the United States, provided skilled labor for that purpose could not be otherwise obtained; and (c) professional actors, artists, lecturers, singers, and personal and domestic servants. The Act of March 3, 1891 (26 Stat. 1084) again extended the prohibition so as to include other undesirable aliens, and amended the Act of February 6, 1885, by providing that the contract labor provisions should not apply to "members of any religious denomination nor persons belonging to any recognized profession, nor professors for colleges and seminaries," and by extending those provisions to relatives and personal friends. The Act of March 3, 1893 (27 Stat. 569) was enacted for the purpose of facilitating the inforcement of the then existing immigration and contract labor laws. The Act of March 3, 1903 (32 Stat. 1213) included other undesirable aliens not theretofore excluded, enlarged the list of persons to which the contract labor provisions should not apply and provided for the deportation of aliens found to be unlawfully in the United States. The Act of February 20, 1907 (34 Stat. 898) repealed the Act of

March 3, 1903, except Section 34 which dealt with a different subject, but the provisions of the repealed sections were therein re-enacted with some changes and additions. The excluded classes were extended. The importation of skilled labor was authorized, provided labor of like kind unemployed could not be found in this country. The classes of persons to which the contract labor provisions did not apply were somewhat enlarged.

The Act of February 5, 1917 (39 Stat. 874) is "An Act to Regulate the Immigrations of Aliens to, and the residence of Aliens in, the United States." The first section defines the word "alien" as therein used. The second section provides for the imposition of a head-tax and the collection of the same. The third section further enlarges the classes of aliens excluded for the general welfare of the United States, and declares:

> "That the following classes of aliens shall be excluded from admission into the United States: * * *; unless otherwise provided for by existing treaties, persons who are natives of islands not possessed by the United States adjacent to the Continent of Asia, situate south of the twentieth parallel of latitude, north, west of the one hundred and sixtieth meridian of longitude east from Greenwich, and north of the tenth parallel of latitude south, or who are natives of any country, province, or dependence situate on the Continent of Asia west of the one hundred and tenth meridian of longitude east from Greenwich and east of the fiftieth meridian of longitude east from Greenwich and south of the fiftieth parallel of latitude north, except that portion of said territory situate between the fiftieth and the sixty-fourth meridians of longitude east from Greenwich and the twenty-fourth and thirty-eighth parallels of latitude north, and no alien now in any way excluded from, or prevented from entering the United States shall

be admitted to the United States. The provision next foregoing, however, shall not apply to persons of the following status or occupations: Government officers, ministers or religious teachers, missionaries, lawyers, physicians, chemists, civil engineers, teachers, students, authors, artists, merchants, and travelers for curiosity or pleasure, nor to their legal wives or their children under sixteen years of age who shall accompany them or who subsequently may apply for admission to the United States, but such persons or their legal wives or foreign-born children who fail to maintain in the United States a status or occupation placing them within the excepted classes shall be deemed to be in the United States contrary to law, and shall be subject to deportation as provided in section nineteen of this Act."

Section 38 repeals the Act of March 26, 1910, amending the Act of February 20, 1907, except Section 34 thereof; and all other acts and parts of acts inconsistent with the Act; *"Provided,* that this act shall not be construed to repeal, alter, or amend existing laws relating to the immigration or exclusion of Chinese persons or persons of Chinese descent, except as provided in Section 19 hereof, nor to repeal, alter, or amend Section 6, Chapter 455, 3d Session, 58th Congress, approved February 6, 1905, nor to repeal, alter or amend the act approved August 2, 1882, and amendments thereto, except as provided in Section 11 hereof."

CHINESE EXCLUSION LAWS

In the fifth article of the treaty between the United States and China, concluded in July, 1868, known as "The Burlingame Treaty," the high contracting parties declared that "they recognized the inherent and inalienable right of man to change his home and allegiance, and also

the mutual advantages of the free migration and emigration of their citizens and subjects respectfully from the one country to the other, for purposes of curiosity, of trade, or as permanent residents." By the sixth article, the "most favored nation's" privileges, immunities, and exemptions were extended to the citizens of each while in the country of the other. Upon the application of the United States, a supplementary treaty was concluded in November, 1880, in which China agreed that the Government of the United States may regulate, limit, or suspend the coming of Chinese laborers to the United States, provided that "the limitation or suspension shall be reasonable, and shall apply only to Chineses who go to the United States as laborers." It was further agreed by both parties that "Chinese subjects, whether proceeding to the United States as teachers, students, merchants, or from curiosity, together with their body or household servants, and Chinese laborers who are now in the United States, shall be allowed to go and come of their own free will and accord, * * *." The Act of May 6, 1882 (22 Stat. 58) was framed in conformity with the provisions of this supplementary treaty. Section six of that act prescribed a mode of proof, now known as "Section-six certificate," which was intended to prevent the evasion of the prohibition against the coming of Chinese laborers into the United States. The amendatory act of July 5, 1884 (23 Stat. 115) enlarged the terms of that certificate and provided that it "shall be the sole evidence permissible on the part of the person so producing the same to establish a right of entry into the United States." The absolute exclusion of Chinese laborers was prescribed by the Act of October 1, 1888 (25 Stat. 504), Chinese Exclusion Case, 130 U. S. 581. The Act of April 29, 1902

(32 Stat. 176), as amended by the Act of April 27, 1904 (33 Stat. 428), re-enacted, extended, and continued in force without modification, limitation, or condition, all the laws on this subject which were in force on the last mentioned date.

It will thus be seen that there has been a constant tightening of the reins in respect to the immigration of Chinese, and that the purpose and intent of the law as it stands today are to absolutely prevent the coming into the United States of Chinese laborers, skilled or unskilled, and to require a very high class of evidence, section-six certificates, of every one, with few exceptions, who claims to belong to one of the exempt classes before he is permitted to enter this country or its possessions.

IMMIGRATION LAWS AND CHINESE EXCLUSION LAWS CONSIDERED TOGETHER

The Act of February 5, 1917, and the Chinese Exclusion Laws constitute comprehensive legislation on those subjects. Broadly speaking, all legislation touching these matters rests upon the well recognized principle of international law that any independent nation may, in the exercise of its inherent powers of sovereignty, prohibit the entrance of foreigners into its territory, or prescribe the conditions under which they shall be allowed to enter and remain, temporarily or permanently.

All laws, except the Act of February 5, 1917, enacted on the subject of immigration have been of a selective rather than restrictive character. The grounds of exclusion, except those provisions relating to contract labor, was based largely on the personal characteristics, or moral, physical or mental defects of the individual seeking admission into the United States, the main object be-

ing the promotion of the health, morals, and general welfare of the people along these lines, and not so much the enactment of economic measures. The contract labor provisions partake more of the latter character. The selective features of prior acts were not only retained in the Act of February 5, 1917, but were strengthened and supplemented with the addition of a few excluded classes. The application of the immigration laws to Chinese aliens, from and including the Act of March 3, 1903, is well settled, although the operation of the Chinese exclusion laws is not affected thereby (*United States* v. *Wong You,* 223 U. S. 67.)

A very concise and comprehensive statement of the treaties entered into by the United States and China up to and including that of 1880 and the causes which brought about the enactment of the Chinese Exclusion Laws is set forth in the decision rendered in the case of *Chae Chan Ping* v. *United States,* 130 U. S. 581. After pointing out that the discovery of gold in California in 1849 was followed by a large immigration thither from all ports of the world, and particularly China, which gave rise to a competition between Chinese immigrants of the laboring class and our people, which soon assumed proportions dangerous to the public peace, the Court proceeds:

> "The competition steadily increased as the laborers came in crowds on each steamer that arrived from China, or Hong Kong, an adjacent English port. They were generally industrious and frugal. Not being accompanied by families, except in rare instances, their expenses were small; and they were content with the simplest fare, such as would not suffice for our laborers and artisans. The competition between them and our people was for this reason altogether in their favor, and the consequent irri-

tation, proportionately deep and bitter, was followed, in many cases, by open conflicts, to the great disturbance of the public peace.

"The differences of race added greatly to the difficulties of the situation. Notwithstanding the favorable provisions of the new articles of the treaty of 1868, by which all the privileges, immunities, and exemptions were extended to subjects of China in the United States which were accorded to citizens or subjects of the most favored nation, they remained strangers in the land, residing apart by themselves, and adhering to the customs and usages of their own country. It seemed impossible for them to assimilate with our people or to make any change in their habits or modes of living. * * *."

The above-quoted provisions of Section 3 of the Act of February 5, 1917, constitute a real and effective Asiatic Exclusive Law. The "natives" of the territory within the designated boundaries are all, when considered as a class, excluded. Only those are entitled to enter who are expressly allowed. Those native, like the Chinese, can live cheaply. They are content with the simplest fare. The laboring classes come to this country without bringing with them their families. On account of their personal characteristics, habits, customs and training, assimilation with Americans is out of the question.

The United States Department of Labor, Bureau of Immigration, in its rules of May 1, 1917 (second edition, Nov., 1917, page 42) for the guidance of those administrative officials concerned in the administration of the Act of February 5, 1917, directs that:

"Subd. 3. *Proof of exemptions.*—Natives of the geographically defined territory who claim exemption on the ground that they are of a status or occupation mentioned in the exceptions to the geographical ex-

cluding clause shall present in support of such a claim evidence procured in the place of their domicile showing what their status or occupation has been during at least the two preceding years. Such evidence must be of a convincing nature, and its authenticity shall be attested by the consular officer of the United States located nearest such place of domicile. * * *."

As it is clear that the objects sought to be accomplished by the enactment of the "Asiatic Exclusion Law" and the Chinese exclusion laws were exactly the same—the gradual raising and not the lowering of our economic level—it necessarily and logically follows that Congress intended that the term "merchants" as used in Section 3 of the Act of February 5, 1917, should be given its ordinary and accepted meaning, which is that or substantially that given in Section 2 of the Act of November 3, 1893, or that given by the Department of Labor, and to require convincing evidence that each immigrant belongs to one of the privileged classes before he should be permitted to land. If we are correct upon this branch of the case, the petitioners have fallen far short of showing that they are merchants within the meaning of Section 3 of the Act of February 5, 1917, even if it be admitted that they were industrial partners of Wassiamall Assomall and Company at the time they sought to enter the Philippine Islands.

POWER OF THIS COURT TO REVIEW JUDGMENTS AND DECREES OF THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

Section 27 of the Act of August 29, 1916 (39 Stat. 555) which is substantially a re-enactment of Section 10 of the Act of July 1, 1902 (39 Stat. 695) provides that the Supreme Court of the United States shall have juris-

diction to review the final judgments and decrees of the Supreme Court of the Philippine Islands in all cases in which the Constitution or any statute or treaty of the United States is involved, or in cases in which the value in controversy exceeds $25,000, on appeal or writ of error by the party aggrieved. Section 5 of the Act of September 6, 1916 (39 Stat. 727) provides that no judgment or decree of the Supreme Court of the Philippine Islands shall be reviewed by the Supreme Court of the United States upon writ of error or appeal; but it shall be competent for the Supreme Court, by certiorari or otherwise, to require that there be certified to it for review and determination any cause wherein the Supreme Court of the Philippine Islands may render a judgment "which would be subject to review under existing law."

Thus, the power of this court to review the judgments and decrees of the Supreme Court of the Philippine Islands is limited by positive law to two general classes of cases. In the one, it is the nature of the case, and in the other it is the amount involved, which is the test of jurisdiction in every instance. If a particular case falls within one or the other of these classes, the inquiry then arises "whether the matter is of sufficient importance in itself, and sufficiently open to controversy, to make it the duty of this court to issue the writ applied for in order that the case may be reviewed and determined as if brought here on appeal or writ of error" (*Law Ow Bew, Petitioner*, 141 U. S. 583, 587.)

It is strongly urged that the Immigration Act of February 5, 1917, is really and substantially involved in the case at bar for the reason that the construction placed upon that act by the Supreme Court of the Philippine Islands, to the effect that the "Section-six certificate" is

the "sole evidence permissible" to establish the petitioners' right to enter the Islands, defeated the right set up by the parties, whereas an opposite construction would have sustained that right. If this contention were well-grounded in fact, we would at once admit that the statute is "involved" within the meaning of Section 27 of the Act of August 29, 1916. But the facts are otherwise.

While it is true that the Insular Supreme Court stated that—

> "The appellees did not present the 'Section 6 certificate.' The board of special inquiry was therefore justified in disregarding all other proof relating to their occupation as merchants; * * * In the absence of 'Section six certificates' the Department of Customs was not only authorized but obliged under the law to refuse the appellees admission into the Philippine Islands. Not only did the appellees fail to furnish the 'sole evidence permissible' to establish their right to enter into the Philippine Islands, but they failed absolutely to show that they were merchants in the country from which they came * * *,"

the court also stated that

> "In fact, they (the petitioners) expressly admit that they were not merchants in their home province or municipality. Their sole contention was and is that they had entered into a partnership or association by virtue of which they were to become merchants upon their arrival in the Philippine Islands. The law does not contemplate that aliens who claim to belong to an exempted class, or aliens otherwise prohibited from entering the United States, shall be permitted to enter the territory of the United States to become merchants. The fact that they were merchants before they entered the United States is the fact that they must establish."

It is well settled that this court will not grant a writ of certiorari for the purpose of reviewing a correct judgment simply because some of the reasons given by the court below are erroneous (2 Encyclopedia of the United States Supreme Court Reports 312, and cases cited). Is the judgment of the Insular Supreme Court correct? This is the question to be determined in so far as this branch of the case is concerned, and not the soundness of the reasons upon which that judgment professes to proceed.

If it be true that the Insular Supreme Court erred in stating that in the absence of Section-six certificates the Department of Customs was "obliged under the law to refuse the appellees admission into the Philippine Islands," such a statement would be at most a non-prejudicial error because the evidence submitted does not show that the petitioners belonged to one of the privlieged classes and were therefore entitled to enter the Islands. As stated by the Insular Supreme Court, the petitioners admit that they were not merchants in their home province or municipality. "The fact that they were merchants before they entered the United States is the fact that they must establish." They can not enter the United States "to become merchants." There can be no doubt about the soundness of this holding when applied to a "native" who is seeking to enter the United States for the first time or who is not seeking to enter as a *returning merchant.* And this is what the Insular Supreme Court had in mind when it used the language just quoted. The rights of such "natives" must be determined as of the date of their application for entry—Ex parte Wu Kao, 270 Fed. 351.

While Congress has prescribed the mode of proof, Section-six certificates, for the admission of Chinese persons and has also provided for *returning Chinese merchants,*

the Act of February 5, 1917, does not, as we have said, define the term "merchants" nor prescribe the nature, character, or kind of proof necessary to establish a mercantile status in the immigrant's domicile of origin nor provide for the *return* of merchants from the bared zone. It is immaterial in so far as the case at bar is concerned, whether the rule set forth in Subdivision 3, entitled "proof of exemption," supra, is in force in the Philippine Islands or not because the petitioners are not seeking to enter that country as merchants in their domicile of origin. There can be no doubt however but that the "Officers of the general government" of the Islands have the power to adopt that rule for their guidance if they saw fit to do so. *And it will be the time to inquire whether a "returning native merchant" has the right, under the Act of February 5, 1917, to re-enter the United States or the Philippine Islands when we have a real case of that kind.*

While we agree with counsel that, "subject only to the control of this Honorable Court, the immigration officers and the inferior courts of the Philippine Islands are bound by the decisions and rulings of the Supreme Court of the Islands," we do not concur in the view that the *statements* of the Insular Supreme Court that "the sole evidence permissible in support of the petitioners' claim that they are merchants is the presentation of a Section-six certificate," and that no such certificate having been presented, "the Board of Special Inquiry was, therefore, justified in disregarding all other proof relating to their occupation as merchants," and "was not only authorized but obligated, under the law, to refuse the appellees admission into the Philippine Islands," constitute either decisions or rulings which are binding upon the inferior courts and tribunals because such statements are nothing more than mere *obiter dicta.*

CONCLUSION

The respondent stands upon the propositions (a) that the courts are without jurisdiction to review the action of the Customs Authorities because the petitioners have failed to show any abuse of power or discretion on the part of such authorities or that they rested their conclusions on a manifestly erroneous construction or misconception of the law applicable *to the facts disclosed by the record;* (b) that this court will not grant a writ of certiorari for the purpose of reviewing a correct judgment, such as the one under consideration, although some of the reasons or statements in the opinion may be erroneous; and (c) there is no statute of the United States *involved* in these proceedings.

It is therefore respectfully submitted that the writ must be denied.

GRANT T. TRENT,
Lieutenant-Colonel, Judge Advocate.
LOGAN N. ROCK,
Captain, Judge Advocate,
Attorneys for Respondent.